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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant/  
Real Party in Interest : RAKOCZY

Serial Number : 10/647,006

Filed : 08/22/2003

For : FREE STANDING, PORTABLE SUPPORT  
SYSTEM STAND FOR DISPENSING LIQUID  
FOR PETS/ANIMALS

Examiner : OLSZEWSKI, JOAN M.

Group Art Unit : 3643

ATTORNEY DOCKET : RD37/02

Commissioner for Patents  
Alexandria, VA 22313-1450

APPLICANT'S APPEAL BRIEF

This is an appeal from the Examiner's Final Rejection of  
May 19, 2006.

REAL PARTY IN INTEREST

The real party in interest in this appeal is applicant  
BETSIE MARSHALL DAVIS BROOKS RAKOCZY.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences which will  
directly affect, or be directly affected by, or have a bearing

on, the decision in the pending appeal.

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### STATUS OF THE CLAIMS

The status of the claims in this application is:

A. TOTAL NUMBER OF CLAIMS IN APPLICATION:

Claims originally filed in this application are:

Claims 1 - 14.

Claim added with Amendment of 5/13/2005:

Claim 15.

B. STATUS OF ALL THE CLAIMS.

1. Claims canceled : Claim 1 and 3 - 15.

2. Claim pending : Claim 2.

4. Claims allowed : None.

5. Claims rejected : Claim 2.

6. Allowable Claims : None.

C. CLAIM BEING APPEALED : Claim 2.

### STATUS OF AMENDMENTS

An amendment filed August 11, 2006, in response to the Final Office Action of May 19, 2006, has been entered for purposes of appeal.

### SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention is a support system stand 10 for dispensing liquid for pets/animals. (Spec. Pg. 11, Lines 1-2) First provided is a liquid dispensing bottle 12. (Spec. Pg. 11, Line 7) The bottle has a dispensing apparatus 20 being angularly disposed from the body. (Spec. Pg. 11, Lines 10-11)\_ The

dispensing apparatus has a tube 22 with a pet/animal activated mechanism. (Spec. Pg. 11, Lines 11-12)

Next provided is a support base 30. (Spec. Pg. 11, Line 14) The support base has a supplemental lower plate 32 (Spec. Pg. 11, Line 15) and a vertical support member 40 with an upper edge 42, lower edge 44, inner face 46 and outer face 48. The lower edge of the vertical support member is coupled to the supplemental lower plate. (Spec. Pg. 11, Lines 18 - 21)

Next provided is a bottle retaining member 65. The bottle retaining member includes a vertical backing member 67. A lower horizontal holding member 79 is coupled to the vertical backing member of the retaining member. The bottle retaining member also has two horizontal holding members 69. (Spec. Pg. 15, Lines 1-6; March 3, 2006 Amendment Page 2, Lines 14-18) Each horizontal holding member has an opening coupled to the vertical backing member of the retaining member at a position above the lower horizontal holding member. (Spec. Pg. 15, Lines 6-8; March 3, 2006 Amendment, Page 2, Lines 18-21) The bottle retaining member includes two laterally spaced threaded bolts 73 for vertically adjustable coupling to the vertical member of the support base in a manner to preclude rotation. (Spec. Pg. 15, Line 21 - Page 16, Line 2; March 3, 2006 Amendment, Lines 1 and 2).

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Claim 2 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Ziaylek, Jr., et al., US Patent 4,848,714 (Ziaylek) in view of Highwood, US Patent 2,615,238."

#### ARGUMENT

Claim 2 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Ziaylek, Jr., et al., US Patent 4,848,714 (Ziaylek) in view of Highwood, US Patent 2,615,238." This rejection is traversed.

The Examiner's final rejection attempts to combine the teaching of Ziaylek directed to the support of air cylinders of the type used by fire fighters with Highwood which is directed to a tank clamp for welding materials and the like. The Examiner then concludes: "It would have been obvious to one having ordinary skill in the art at the time that the invention was made to use the vertical support member as taught by Highwood with the bottle retaining brace as disclosed by Ziaylek for situations in which there is no wall space available for the attachment of the bottle retaining brace." In response to this rejection, the thrust of the arguments is that there is no teaching in the prior art for the combination proposed by the Examiner and that the teachings of the Examiner's prior art was from diverse technologies, disclosures which teach away from that which applicant has invented and is now claiming. In the Examiner's

response to the proposed amendment after final rejection, the Examiner concludes that: ". . . one with skill in the art would find it obvious to modify the support structure of Ziaylek with that of Highwood so as to provide a bottle retaining device which is capable of use absent a walled structure for mounting." The position of the Examiner is untenable.

Applicant's invention has similarities to the prior art as exemplified by Ziaylek and Highwood. There are, however, significant differences. Applicant's invention includes a bottle retaining member 65 similar to Ziaylek inasmuch as it has a vertical backing member 67 with a lower horizontal holding member 79 and two horizontal holding members 69, each with an opening. Note Figure 12. In addition, applicant's invention, like Highwood, has a support base 30 with a vertical support member 40 and a lower plate 32. There can be found no teaching in Ziaylek for attaching it to a support base of the Highwood type. Conversely, there is no teaching in Highwood for accepting a bottle retaining member as disclosed in Ziaylek.

Beyond this, however, there is no disclosure whatsoever, anywhere in the prior art, of applicant's specifically claimed "bottle retaining member including two laterally spaced threaded bolts for vertically adjustable coupling to the vertical member of the support base." Ziaylek is absent in teaching such two laterally spaced threaded bolts. Ziaylek does recite "openings

adapted to receive connecting bolts 27, whereby the clamping members are secured to the bracket 10 at selected locations along the length of the bracket." Note Column 3, lines 51-54. This relationship in Ziaylek is different from that in applicant's invention wherein the horizontal holding members as well as the lower horizontal holding member are secured to the vertical backing member and are movable together with regard to the support base. The first deficiency in the Examiner's position is in the absence of a prior art teaching for the combination that applicant has made and is claiming. The second deficiency in the Examiner's position is in the specifically claimed bolts adjustably coupling a bottle retaining member 65 with a support base 30 which are not found in the prior art whether taken alone or in combination.

It would appear that the Examiner has merely gleaned miscellaneous features in the prior art and has attempted to combine them without a teaching for their combination. The only teaching is in applicant's disclosure which, by definition, is not prior art. But even if there were a teaching for the combination, the resulting structure would still fail to anticipate applicant's invention for the reasons set forth herein above.

CONCLUSION

In view of the deficiencies of the prior art cited and applied by the Examiner, it is requested that the rejection to the claim be withdrawn and the present application be allowed and passed to issue.

Reconsideration, a reversal of the Examiner's position, and a Notice of Allowance are requested.

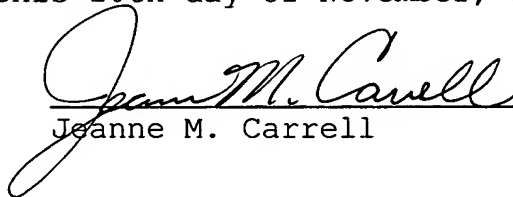
Respectfully submitted,



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CERTIFICATE OF MAILING

I HEREBY CERTIFY that the foregoing Appeal Brief is being placed in an envelope with sufficient postage affixed thereto and deposited as first class mail addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 this 20th day of November, 2006.

  
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Jeanne M. Carrell

## APPENDIX A

### CLAIMS APPENDIX

What is claimed as being new and desired to be protected by LETTERS PATENT of the United States is as follows:

1) (Cancelled).

2) A support system stand for a liquid dispensing bottle having a dispensing apparatus being angularly disposed from the body, the dispensing apparatus having a tube with a pet/animal activated mechanism, comprising;

a support base having a supplemental lower plate and a vertical support member with an upper edge, lower edge, inner face and outer face, the lower edge of the vertical support member being coupled to the supplemental lower plate; and

a bottle retaining member including a vertical backing member with a lower horizontal holding member coupled to the vertical backing member of the retaining member, the bottle retaining member also having two horizontal holding members, each with an opening coupled to the vertical backing member of the retaining member at a position above the lower horizontal holding member, the bottle retaining member including two laterally spaced threaded bolts for vertically adjustable coupling to the vertical member of the support base in a manner to preclude rotation.

3. - 15. (Cancelled).



APPENDIX B

EVIDENCE

None

APPENDIX C  
RELATED PROCEEDINGS

None